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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/769,057	01/25/2001	Loukritia Balkos	4754*39	5066

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EXAMINER

HECKENBERG JR, DONALD H

ART UNIT PAPER NUMBER

1722

DATE MAILED: 08/28/2002

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/769,057

Applicant(s)

BALKOS ET AL.

Examiner

Donald Heckenberg

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 15-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☒ Claim(s) 9-14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7 .
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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1. Applicant's election of Group I (claims 1-14) in Paper No. 8 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. § 119(e) (to a provisional application) as follows:

An application in which the benefits of an earlier application are desired must contain a specific reference to the prior application(s) in the first sentence of the specification or in an application data sheet (37 CFR 1.78(a)(2) and (a)(5)).

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 2-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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The term "significantly heavier" in claim 2 is a relative term which renders the claim indefinite. The term "significantly heavier" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-2 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Rogan (US Pat. No. 4,765,029).

Rogan teaches a press for making a food patty, comprising a mould (1) having an opening therethrough (fig. 2), and a carrying component (3) having a substantially flat panel and a handle (4 and 5) affixed to the panel, the flat panel having a surface to contact a product to be pressed into a patty (fig. 7), the handle being sized to pass through the opening to allow the mould to move along the handle (fig. 2), the mould being

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positionable to overlies the panel and thereby facilitate the application of pressure to the product.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered

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therein were made absent any evidence to the contrary.

Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rogan in view of Klefbeck (US Pat. No. 5,658,608).

Rogan teaches the press apparatus as described above. Rogan fails to teach the apparatus to be as such that the mould and the carrying component are formed of stainless steel.

Klefbeck teaches an apparatus for forming food patties which is made of stainless steel (col. 5, lns. 16-18).

It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to have modified the apparatus of Rogan as such to have made the apparatus from stainless steel because this is a suitable material for constructing a food patty forming apparatus as suggested by Klefbeck.

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11. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rogan and Klefbeck as applied to claims 1-2, 5, and 8 above, and further in view of Bodenstein (US Pat. No. 996,449).

Rogan and Klefbeck teach the apparatus as described above. Rogan and Klefbeck fail to teach the apparatus to further include a loop affixed to a free end of the handle.

Bodenstein teaches a food pressing apparatus wherein the end of the handle piece (H) has a loop (J) to allow for gripping by fingers (p. 1, lns. 40-42).

It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to have modified the apparatus of Rogan and Klefbeck as such to have affixed a loop to the free end of the handle because this would have allowed the handle to be gripped by fingers, and thereby ease operation of the press as suggested by Bodenstein.

12. Claims 3-4 and 7 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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13. Claims 9-14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

14. The following is a statement of reasons for the indication of allowable subject matter:

The prior art of record fails to teach or suggest a press for making a food patty comprising a mold having an opening therethrough, and a carrying component having a substantially flat panel and a handle affixed to the panel, the flat panel having a surface to contact the material to be pressed into the patty, the handle being sized to pass through the opening to allow the mould to move along the handle, the mould being positionable to overlies the panel and thereby facilitate the application of pressure to the product, wherein the mould is in the form of a disc having a top and bottom generally circular surfaces bridged by a smooth sidewall and wherein the flat panel corresponds in shape to the bottom surface as recited in claims 3 and 9.

The closest prior art taught by Rogan is discussed above. Rogan fails to teach or suggest the mould being in the form of a disc with circular top and bottom surfaces.

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15. The following references cited, but not relied upon, are deemed pertinent to the instant application:

Berg (US Pat. No. 1,749,178) teaches a pressing device for forming hamburger patties.

Stiegler (US Pat. No. 2,837,761) teaches a hamburger patty press forming device.

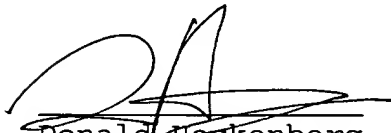
Glenny (US Pat. No. 3,120,678) teaches a hamburger press used to form patties.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald Heckenberg whose telephone number is (703) 308-6371. The examiner can normally be reached on Monday through Friday from 9:30 A.M. to 6:00 P.M.

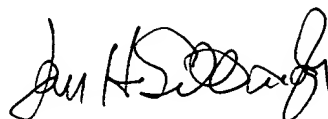
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Jan Silbaugh, can be reached at (703) 308-3829. The official fax phone number for the organization where this application or proceeding is assigned is (703) 872-9310 for responses to non-final action, and 703-872-9311 for responses to final actions. The unofficial fax phone number is (703) 305-3602.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Donald Heckenberg
August 22, 2002



JAN H. SILBAUGH
SUPERVISORY PATENT EXAMINER
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08/26/02